

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, Applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-14, drawn to a CAB molecule comprising an amino acid sequence having the sequence set forth in SEQ ID NO: 1.

Group II, claim(s) 15-28, drawn to a nucleic acid encoding a CAB molecule comprising an amino acid sequence having set forth in SEQ ID NO: 1.

2. The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:
Begent et al./ U.S. Patent Application Publication number US 2005/0147614 A1 (filed July 1, 2003) discloses sequence 2 (MFE-23 antibody), which is the same as Applicants' amino acid sequence set forth in SEQ ID NO: 1, see sequence alignment. Therefore, the technical feature recited in claim 1 is not special. Accordingly, the groups are not so linked as to form a single general concept under PCT Rule 13.1.

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RESULT 4 from 1.rapbm database.

US-10-609-671-2

; Sequence 2, Application US/10609671

; Publication No. US20050147614A1

; GENERAL INFORMATION:

; APPLICANT: Richard H.J. Begent

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; APPLICANT: K. Dane Witttrup

; TITLE OF INVENTION: IMPROVED ANTIBODIES AGAINST TUMOR SURFACE ANTIGENS

; FILE REFERENCE: 117-455 / N.86090A PJC

; CURRENT APPLICATION NUMBER: US/10/609,671

; CURRENT FILING DATE: 2003-07-01

; PRIOR APPLICATION NUMBER: US 60/392354

; PRIOR FILING DATE: 2002-07-01

; NUMBER OF SEQ ID NOS: 25

; SOFTWARE: MS Word

; SEQ ID NO 2

; LENGTH: 244

; TYPE: PRT

; ORGANISM: Mus musculus

US-10-609-671-2

Query Match 67.9%; Score 235; DB 5; Length 244;

Best Local Similarity 30.6%;

Matches 63; Conservative 0; Mismatches 143; Indels 0; Gaps 0;

Qy 26 GFNIKDSYMHXXXXXXXXXXXXXXXXXWIDPENGDEYAPKFQXXXXXXXXXXXXXXXXXXXXX 85

Db 26 GFNIKDSYMHWLRQGPEQGLEWIGWIDPENGDEYAPKFQ GKATFTTDTSSNTAYLQLSS 85

Qy 86 XXXXXXXXXXXXXGTPTGPYYFDYXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX 145

Db 86 LTSED TAVYYCNEGTPGYYFDYWGQGT TVTVSSGGGSGGGSGGGGSENVLTQSPAI 145

Qy 146 XXXXXXXXXXXXXSASSSVSYMHXXXXXXXXXXXXXXXXXSTSNLASXXXXXXXXXXXXXXXXX 205

Db 146 MSASPGEKVTITCSASSSVSYMHWFQ QKPGTSPKLWIYSTSNLASGVPARFSGSGSGTSY 205

Qy 206 XXXXXXXXXXXXXXXXXXXXQQRSSYPLT 231

Db 206 SLTISRMEAEDAATYYCQQRSSYPLT 231

3. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention or species.

Should Applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. The Examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may

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be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b).

Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the Examiner before the patent issues. See MPEP § 804.01.

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alana Harris Dent, Ph.D. whose telephone number is (571)272-0831. The Examiner works a **flexible schedule**, however she can normally be reached on 8 am to 8 pm with Monday through Friday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Misook Yu, Ph.D. can be reached on (571) 272-0839. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alana M. Harris, Ph.D.
24 August 2011

/Alana Harris Dent, Ph.D./

Primary Examiner, Art Unit 1643